

Exhibit 3

Oct 21 Russ Bowen and Ken Rudo.txt

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1 IN THE CIRCUIT COURT
2 FOR BALTIMORE COUNTY, MARYLAND
3 JEFF ALBAN, et al ,
4 Plaintiffs
5 VERSUS CASE No. 03-C-06-010932

6

7 EXXONMOBIL CORPORATION, et al ,
8 Defendant

9 * * * * *

10 October 21, 2008

11 REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
12 DAILY COPY - NOT PROOF READ

13

14 BEFORE:

15 HONORABLE MAURICE W. BALDWIN, JR., ASSOCIATE JUDGE

16

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19

20 REPORTED BY:

21 MARINA COYLE (PM Session)

22 Official Court Reporter

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1 APPEARANCES:

2

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3 ON BEHALF OF THE PLAINTIFFS:

4

5 STEPHEN SNYDER, ESQUIRE

6 ROBERT J. WELTCHEK, ESQUIRE

7 SCOTT SNYDER, ESQUIRE

8 MICHAEL SNYDER, ESQUIRE

9 TOMEKA CHURCH, ESQUIRE

10 JASON A. L. TIMMEL, ESQUIRE

11

12 ON BEHALF OF THE DEFENDANTS:

13

14 JAMES F. SANDERS, ESQUIRE

15 THOMAS DUNDON, ESQUIRE

16 WILLIAM STACK, ESQUIRE

17 CARLOS BOLLAR, ESQUIRE

18 ANDREW GENDRON, ESQUIRE

19 C. CAREY DEELEY, ESQUIRE

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1 I N D E X

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3 WITNESS PAGE

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2 (Whereupon, the jury entered the courtroom,

3 with Mr. Russell Bowen resuming the witness stand.)

4 THE COURT: Be seated, please.

5 The jury and counsel, we apologize for the

6 late start.

7 Mr. Snyder?

8 MR. STEVEN SNYDER: May I continue, sir?

9 THE COURT: Yes, sir.

10 Q. (Mr. Steven Snyder) Mr. Bowen, I'm not going to

11 be too much longer.

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12 Q. When did you first get involved in MTBE in
13 researching its potential hazards to the environment and
14 to people?

15 A. Well, it goes back literally to the day I came
16 here in April of 1989. Some of the first wells that
17 were brought to my attention to evaluate had this
18 chemical in there that was a component of gasoline. And
19 Dr. Taylor had told me that the year before, he had seen
20 this chemical in private wells for the first time. He
21 had never seen it in a private well before 1988.

22 And then we went to the EPA, and we talked to
23 them. Have you seen this in private wells before 1989?
24 And we talked to some people in other states,
25 toxicologists in other states, and everybody drew a

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1 blank. Well, we don't know anything about could it be
2 in the water. The EPA may have had data, but they
3 didn't acknowledge to us that they had seen this in the
4 water. So from our standpoint, we were maybe the first
5 or one of the first states to identify this chemical in
6 drinking water.

7 Q. So in terms of the universe of knowledge, because
8 we talked about how knowledge evolves, the knowledge
9 regarding MTBE is less than 20 years old in terms of it
10 as a health hazard.

11 A. It's been -- I think it's been in a place where
12 we could be exposed to it since about 1979, which is
13 when it was added to gasoline to replace lead and to
14 make sure that you kept the octane levels up. I'm sure
15 there are engineers and scientists that know a lot more
16 about that aspect of it than I do, but they put it in in

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correct?

22 A. Yes.

23 Q. Okay.

24 A. I don't know the history of it before 1979, if it
25 was ever made and used for anything else, but my

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1 knowledge is as of '79 forward.

2 Q. Okay. So as of at least the time period of '79,
3 early '80s, the only source of MTBE was in gasoline.

4 A. To my knowledge.

5 Q. Okay. And you said that -- I don't want to spend
6 lot of detail at this moment in time, but around this
7 1988, '89 time frame, you became aware of MTBE, as it
8 relates to people's drinking water, in North Carolina?

9 A. Yes.

10 Q. And you began your research, which probably has
11 continued to the present.

12 A. Yes, it has.

13 Q. Without bragging, and I don't want you to brag,
14 where would you consider yourself, in terms of people in
15 the United States that have devoted their careers to
16 studying MTBE, where would you rate yourself in say the
17 top ten or top five?

18 And I don't want to be pompous, but I believe
19 it's important for the jury to understand the time and
20 attention you've given to this subject over the past 20
21 years.

22 A. I'm not going to rank myself because I don't
23 think that's fair to people that work on it. But I am
24 the only persona that I know of who has worked with the
25 chemical in terms of people being exposed to it

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21 And you try to use statistics to try to see
22 what kind of tumors are formed. Are they high enough
23 from a statistical standpoint so you can say this
24 chemical can cause cancer in animals. And in the world
25 of toxicology, it says -- also says that that is

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1 information that we can use to say that it can probably
2 cause chemicals -- cause cancer in humans. So that's
3 the information that we primarily rely on in order to
4 know what a chemical can do from a cancer standpoint.
5 That is why those studies are so important.

6 Q. And specifically in the area of studies of MTBE,
7 has the petroleum industry or any scientist to date done
8 any research on humans with regard to cancer?

9 A. In terms of MTBE, that is the, I think, the one
10 thing that really truly needs to be done to, you know,
11 we -- we -- we understand that MTBE is a carcinogen. We
12 understand that it's a probable human carcinogen, that,
13 you know, more likely than not, it's going to cause
14 cancer in humans. We understand that it causes
15 mutations. So because it changes the DNA, in -- in the
16 studies that have been done, and some of the studies
17 that have done, it changes the DNA, it implies that
18 there's no safe level. So any level of this chemical we
19 consider to be too much of a risk from an exposure
20 standpoint. And we have to base it on the mutation data
21 that we have, changes in DNA, and the animal studies
22 that show that it causes cancer in different animals,
23 different doses, different tumors, males and females.
24 All the requirements to say that it probably causes
25 cancer in humans have been met.

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1 In order for us to actually sit down and say
2 here's what the risk actually is, we have to have the
3 human studies on top of this where they look the
4 occupational exposures that may have occurred from the
5 '70s and '80s, and they follow those populations
6 forward. And I think along the Texas coast and
7 Louisiana coast where they have the MTBE facilities
8 would be probably be where they have to do these
9 studies. And to my knowledge, and I may get corrected
10 tomorrow by Mr. Stack. But to my knowledge, they
11 haven't done any studies, and I haven't seen any
12 indication that the industry plans to do these things.

13 So that question may not get answered for us for
14 many, many years.

15 Q. So we have, in the specific area, if you want to
16 delve and inquire into whether MTBE poses risks to
17 humans, what we have are animals studies?

18 A. Yes.

19 Q. Have there been any animal studies that
20 demonstrate, whether they were done by the industry or
21 whomever, that have demonstrated in animals that MTBE
22 does not cause cancer?

23 A. I have not seen any studies that were done
24 where -- that were published that at the end of the day,
25 all the results were negative. I haven't seen a cancer

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1 study like that. All the studies -- there are three
2 studies that have been done, that have been published,

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3 and all those studies, to some degree, show some kind of
4 cancer in animals in every one of those.

5 Q. With regard to the studies that are done with
6 regard to the mutagenic -- that the right way to say
7 it?

8 A. That's good.

9 Q. Mutagenic potential of MTBE, how recent are
10 some of those studies?

11 A. I think they go back to 2005 I think is the most
12 recent one that I've seen.

13 Q. Okay. So there's a much more recent body of
14 knowledge regarding mutagenic ability of MTBE than the
15 cancer studies that go back to 1995?

16 A. Yes. That factored significantly in my thinking
17 of this chemical in terms of what it can do to people
18 that are exposed to drinking water. The fact that I
19 have so many more studies that show mutations and
20 changes in DNA has changed my thinking in terms of -- of
21 is there a safe level or is -- is there not? And
22 because there are so many studies now that show
23 mutations, and because mutations do not have a safe
24 level, to me that implies that MTBE essentially does not
25 have a safe level.

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1 Q. And we'll get into that in greater detail. You
2 sort of foreshadow days. Let's not scare the jury.
3 You'll be out of here tomorrow, hopefully tomorrow
4 morning.

5 A. Well, I'll -- hey, I'm here all day for you and
6 Mr. Stack.

7 Q. Sounds a little scary there. They think that you
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8 might be here a few days. I don't think Mr. Stack is
9 going to be that long on cross-examination.

10 The -- the only other area that I want to ask you
11 about, then I'll move on to start some of your opinions
12 in this case, your work in this case in this -- you're
13 not here as the toxicologist from North Carolina.

14 You're here as a paid toxicologist. Our firm has hired
15 you to investigate MTBE and benzene and its effects on
16 my clients in this case, correct?

17 A. Yes.

18 Q. Okay. And you've done that in other cases
19 before, correct?

20 A. Yes, sir.

21 Q. And I believe this is the first time, even though
22 you've done a fair amount of it in the past and you've
23 given a number of depositions, you've never actually
24 testified in a case that went to court.

25 A. As an outside expert, no.

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1 Q. In an MTBE case.

2 A. Yes.

3 Q. You've testified regarding other toxic substances
4 in other cases in court, but never in an MTBE case.

5 A. Right. But in North Carolina, I have testified
6 as a fact witness in a MTBE case.

7 Q. On behalf of the State of North Carolina?

8 A. Yes.

9 Q. Sort of try to draw that distinction.

10 And you, in fact, have run into Mr. Stack in
11 other cases, correct?

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A. Yes. We have spoken on occasion.

13 Q. You've run into Exxon on other cases, correct?

14 A. Yes, I have.

15 MR. WELTCHEK: Your Honor, at this time, I
16 would offer Dr. Rudo as an expert in the field of
17 environmental toxicology.

18 MR. STACK: No objection, Your Honor. We'll
19 take any issues on in cross-examination.

20 THE COURT: Very well.

21 You may proceed.

22 MR. WELTCHEK: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. WELTCHEK:

25 Q. Now, I briefly touched upon this, but I think

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1 it's really important, this evolution of information
2 that occurs, particularly in your field of toxicology.
3 And I just want to understand, hope the jury will
4 understand, the process of the evolution of knowledge.
5 And this -- there's somethings in the real world.

6 For example, 50 years ago, we thought cigarettes
7 were safe, correct? We thought, the citizens of the
8 United States, not the manufacturers.

9 A. To some degree, yes.

10 Q. I mean, women smoked when they were pregnant,
11 right?

12 A. Yes.

13 Q. And the body of knowledge, with regard to
14 nicotine and the cigarette industry, has -- it's
15 exploded in the last 20 years, correct?

16 A. Yes.

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17 Q. I mean, there's litigation against cigarette
18 companies for smokers. There's also cases involving
19 second-hand smoke.

20 A. Yes.

21 Q. We now understand the hazards of sitting in the
22 room or driving in the car or on the airplane -- you
23 used to sit on the airplane, and the non-smoking seats
24 were the last two rows in the plane.

25 Remember those days?

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1 A. Yes.

2 Q. Everybody else was smoking, and you're breathing
3 their smoke.

4 And we didn't know that that smoke was hazardous.

5 A. We've done a lot of work in North Carolina
6 reviewing these studies.

7 Q. Okay. I'm just saying just in our -- in the
8 juror's life time, we've had real experience, common
9 sense, real life experience where things that we thought
10 were safe were proven to be cancer-causing.

11 A. Yes.

12 Q. And that's a good example.

13 A. And -- and even more important, if I can expand
14 on that briefly, is we got a lot more knowledge on
15 chemicals like lead, which you brought up earlier, and
16 arsenic that -- that which we once thought might be
17 toxic at higher doses, has turned out to be a very, very
18 low dose toxin. And that's the evolution of information
19 is that not only can it harm you, but at what level can
20 it harm you.

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21 Q. Right. I mean, there are legions of examples.
22 But some of the most notorious and that really
23 burdened the court systems, asbestos is an example.
24 People thought that you put it on pipes and you put it
25 the insulation and the brake linings and whatever. No

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1 one thought it was going to cause this epidemic of
2 litigation and the cancer and mesothelioma.
3 A. Mesothelioma, yes.
4 Q. And I mentioned lead. I mean, we -- we know as
5 citizens of Maryland, lead paint has become an
6 epidemic --
7 A. Absolutely.

8 Q. -- particularly in Baltimore City. Young
9 children have had their neurologic systems devastated
10 from lead paint, right?

11 A. We have a very vigorous lead program to protect
12 children in North Carolina in terms of analyzing it and
13 abating it and sampling for it and making sure we are
14 very proactive in doing that.

15 Q. But my point is that 40 or 50 years ago, that
16 these houses were being painted with lead paint and no
17 one thought it was hazardous.

18 A. Right. And even when we did, it not until 1979
19 when a man named Needlman did some lead studies in
20 children and showed it was a low dose toxin, changed
21 completely how we thought about it.

22 Q. As far as it -- you made a good point, the levels
23 that are considered to be toxic or hazardous in humans,
24 and in the case of lead in children, that level that
25 dramatically gotten lower, and lower, and lower over the

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1 course of time.

2 MR. STACK: Objection, Your Honor. If we're
3 going to talk about lead, maybe we ought to revise the
4 complaint in this case.

5 THE COURT: Okay. Let's focus --

6 MR. WELTCHEK: If you want my to -- if
7 there's lead in your gasoline, let me know. Seriously --

8 MR. STACK: That's not the point. Objection
9 to relevance, Your Honor.

10 MR. WELTCHEK: -- point of toxicology, I
11 don't accuse Exxon of cigarette smoking or lead. I'm
12 just trying to use it as an example.

13 If that's not fair to you, Mr. Stack. It's
14 just an example. We'll stipulate that this case is not
15 about second-hand smoke and not about lead. I'm trying
16 to go through the process of how toxicology has evolved
17 over the past 40 or 50 years.

18 Q. (Mr. Weltchek) And I think -- do you not think
19 that's important for the jury to understand as it
20 relates to MTBE, which we have a very small body of
21 knowledge in the area of MTBE, correct?

22 A. Yes.

23 Q. And the knowledge, the articles are being
24 published fairly frequently in the area.

25 If you go on some of these scientific websites,

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1 there's a lots of articles be published currently on
2 MTBE.

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3 A. Yes, but the amount of new science that is coming
4 out is very slow.

5 Q. Okay.

6 A. So there's a lot of opinions coming out in the
7 the peer-reviewed literature, but not that much new
8 science.

9 Q. Okay. But the time period that MTBE has been on
10 the market where people, humans can be exposed to it,
11 has been a rather small snapshot in this time.

12 A. Yes.

13 Q. Roughly 20 to 30 years.

14 A. Yes.

15 Q. Okay. Now, with regard to -- let's start out and
16 see if we can get through the first of the areas that I
17 want to talk to you about over the next day, half day,
18 whatever. And Mr. Stack's always good at putting up a
19 summary. I'll verbalize because I didn't put it
20 together.

21 But one of the areas that I want you to talk
22 about and will be talking about, is whether or not in
23 you're opinion MTBE is a probable human carcinogen?

24 A. Yes.

25 Q. We're also going to talk about whether it's a

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1 probable human mutagen.

2 A. Yes.

3 Q. We're going to talk about whether in this case
4 you have an opinion that my clients who potentially were
5 exposed to contaminated drinking water by way of
6 showering, cooking, bathing, drinking, any other ways
7 they might be exposed, whether as a result of their

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8 actually exposures, whether they're at increased risk
9 for a variety of cancers in the future, correct.

10 A. Yes.

11 Q. We're also going to talk about as a result of
12 your opinions with regard to their possible exposures to
13 what you believe to be a cancer-causing substance,
14 whether they should be provided by this jury, as a
15 result of they're verdict, medical monitoring programs
16 so they can be more vigilantly watched in the future, so
17 if they're going to get cancer, pick it up sooner rather
18 than later.

19 A. Yes.

20 Q. And lastly, I'm just hitting the larger areas,
21 we're going to be discussing whether or not my clients
22 should be, by this jury provided money so that each and
23 every one of them -- currently there are five plaintiffs
24 that have been provided, out of the 90, there have been
25 five provided what's called POET systems by Exxon.

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1 And I'm going to ask you, over the course of the
2 next half a day or so, whether you're opinion is that
3 Exxon should provide the other 85 with POET systems.
4 We're going to talk about that, correct?

5 A. Yes.

6 Q. All right. Let's start out -- and I don't think
7 I missed any major areas. Let's first start out with
8 somethings that the jury heard in opening statement by
9 Mr. Sanders.

10 There was some reference -- MTBE, the letter E in
11 MTBE standing for ether, correct?